

Serial No. 10/774,982

Page 8 of 11

Remarks

Interview Summary

A telephone interview was held with the Examiner on November 21, 2006 to discuss amendments to the claims proposed by applicant. Applicant wishes to thank the Examiner for his courteous assistance. While no specific agreement was reached, the Examiner stated that the proposed amendments would likely overcome the claim rejections Under 35 U.S.C. § 112 and the rejections of record based on the West reference.

Claim Objections

Claim 2 was objected to on the basis of an informality: missing the definite article "the" before the word "curved." The claim has been amended to correct the informality.

Claim Rejections Under 35 U.S.C. §112

Claims 4 and 14-18 were rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims have been amended accordingly. Specifically, claim 4 was rejected as lacking proper antecedent basis for the term "upper ... bearing [surface]." The claim has been amended to change the reference from "upper and lower bearing surfaces" to "curved surfaces." Accordingly, applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 112 and allowance of claim 4.

Independent claim 14 was rejected as unclear based on use of the term "the elongate aperture." Claims 15-18 were also rejected as indefinite based on the basis that the claims depend from claim 14. The term "aperture" has been changed to hole and the term "elongate aperture" has been changed to slot to better distinguish between the two claim limitations. Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 112 and allowance of claims 14-18.

Claim Rejections Under 35 U.S.C. §102

Claims 1-5, 7-10, 19, and 24 were rejected under 35 U.S.C. § 102(b) as being anticipated by West(U.S. Patent No. 5,404,682) ("West"). West describes an "adjustable

Serial No. 10/774,982

Page 9 of 11

mounting for a post system" that includes a ball section that can be fitted onto a ground stake that is to be driven into the earth, can be mounted to cement, or the like. The ball portion is for positioning in a seat that is for coupling to a post insert or into a post end. Both the post and post insert attitude to the vertical is adjustable and is maintained by a mounting that utilizes single nut and bolt fastener.

In the first embodiment described in the West patent, a ball section is to fit into a seat that has a hemispherical inner surface with the components positioned and held together by a single bolt coupling. The bolt is fitted through a **hole** formed through the seat and ball section, which ball section hole is **tapered** from a bottom end outwardly to a top end **to allow for the bolt to tilt** across the top end of the hole. So arranged, the seat is positionable across the ball section surface and a nut is provided for turning, within the post insert, over a threaded end of the bolt passed through the seat and ball section clamping the surfaces together. Col. 2 lines 25-38, Fig. 1. An alternative embodiment describes the use of a pair of sloping or tapered washers that are center holed to fit together as a stack and receive a bolt therethrough. Which bolt is also fitted through holes formed in opposing plates that are secured respectively, across the post insert bottom and the ground stake or anchor top surface. The washers fitted over one another have their tapered surface arranged juxtaposition to one another. The rotation of one of which washers over the other therefore increases or decreases, respectively, the thickness of the opposite washer stack edge. The washer stack top surface can therefore be angled to the vertical relative to its lower surface. Col. 2 lines 42-54, Figs. 4-8. A further alternative embodiment involves a ball and seat combination, like that of the first embodiment. The ball section that is for mounting through a plate to a ground stake is arranged to pass a mounting bolt through a center hole thereof to through a seat **to provide a tilt from the vertical of that mounting bolt**. Col. 2, line 67 to Col. 3, line 5. Yet another alternative embodiment described at Col. 8, lines 1-15 and shown in Fig. 1C is a rigid mounting that does not allow for adjustment of the angle of the post at all.

In order to adjust the angle of a mounted post, West requires **a tilt from the vertical of the mounting bolt**. If the bolt does not tilt, West's mount is not adjustable. Indeed, West teaches away from angular adjustment that does not involve tilting of the

Serial No. 10/774,982

Page 10 of 11

mounting bolt by inclusion of the embodiment of Fig. 1C in which the bolt has been set in cement and describing that embodiment as “rigidly mounting the post...” Col. 8, lines 13-14. In contrast to West, a tilting bolt is not needed to obtain angular adjustment of posts mounted according to embodiments of the present invention. Rather the invention as described in claim 1 (as amended) calls for:

A mounting apparatus for a post which includes a *stationary* portion having an *attachment rod secured to a substructure* and extending from the substructure in a direction defining a *fixed* axis; a post base positioned above the stationary portion comprising a post mounting surface and a curved downwardly facing bottom surface, the curved downwardly facing bottom surface having a *slot* through which the attachment rod extends; a lower bearing positioned beneath the post base, the lower bearing comprising a curved upwardly facing surface substantially corresponding in curvature to the curved downwardly facing bottom surface of the post base and in slidable engagement therewith, and providing a center hole through which the attachment rod extends; and means to releasably secure the post base to the stationary portion; wherein the post base may be rotated about the fixed and angularly offset therefrom, to enable a mounted post to be angularly aligned and secured.

West fails to teach or suggest a stationary portion as claimed herein because the bolt in West *must tilt*, *i.e.*, be loosely coupled into the ground, to angularly adjust a mounted post. West simply fails to appreciate the problems bound to result from using a bolt that loosely couples into the ground such as accumulation of water in the coupling, damage from freeze thaw cycles, corrosion and the like. In contrast, the inventor herein, who has worked or supervised others in the field of municipal maintenance through more than 35 harsh Wisconsin winters, appreciates all too well the problems encountered over time in setting marker posts, delineators and the like in outdoor environments. Thus, the invention claimed herein includes *an attachment rod secured to a substructure* and extending from the substructure in a direction defining a *fixed* axis. The claimed invention accomplishes angular adjustability without the need for moving parts in the stationary portion. The stationary portion is simple by design in order to minimize damage from freeze thaw cycles, corrosion, and other wear and tear.

Serial No. 10/774,982

Page 11 of 11

The claimed invention also differs from West by employing a post base ... having a *slot through which the attachment rod extends*. This element is neither taught nor suggested in West.

No other reference of record makes up for the deficiencies noted in West. Applicant therefore respectfully requests reconsideration of the rejections of claims 1-5, 7-10, 19 and 24 and allowance. Claims 6 and 11-18 depend from the above claims and are therefore allowable for the same reasons. Independent claim 23 was rejected under 35 U.S.C. §103 as being unpatentable over West and is also allowable for the same reasons.

For the above-cited reasons, applicant respectfully requests that the Examiner allow the claims of the present application. The Examiner is invited to contact applicant's representative at the number shown below if there are any questions regarding this application or if prosecution of this application may be assisted thereby.

Respectfully submitted,

Date: November 21, 2006

/Mark D. Kelly, Reg. # 39,467/

Mark D. Kelly
Reg. No. 39,467

Attorney for Applicant
5401 N. Shoreland Ave.
Whitefish Bay, WI 53217
Tel: 414-431-5351 or
414-967-1347